IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 470 OF 2004

Mitsui O.S.K.Lines Limited ..Petitioner

vs.

Orient Ship Agency

Pvt. Limtied ... Respondent.

Mr. Z.B. Kamdin i/by Mulla & Mulla

for the petitioner.

Mr. V.R. Dhond i/by A. Kolsepatil

for respondent.

CORAM : S.U.KAMDAR, J.

DATE : 7th DECEMBER, 2004.

P.C.

1. By the present petition, the petitioners are seeking a declaration that the petitioner is not required to renew the bank guarantee in respect of the entire amount of Rs. 5,85,31,000/- in pursuance of the order passed by this Court.

2. This Court has by an order dated 17.10.2002

as modified by further order dated 1.11.2002 directed that the bank guarantee should be furnished of a sum of Rs. 5,85,31,000/- and the same to be kept alive till the disposal of the arbitration petition or further orders of this Court. Time to furnish bank guarantee is also extended by a period of four weeks. These orders came to be passed in the circumstances that the respondents who were the erstwhile shipping agent of the petitioner herein had furnished various bonds to the customs authorities in respect of re-export of the containers which were imported. If the re-export of the said containers is not effected then the customs duty is payable thereon as if they are imported. The agency of the respondent has been terminated by the petitioner herein. However, it is an admitted position that all the containers are not re-exported. It is also an admitted position before me that all the bonds which are given by the respondent to the customs authorities are not yet discharged. The learned counsel for the petitioner however contends that in view of the fact that large number of containers are already re-exported, the bank guarantee for the entire amount should not be liable to be renewed and correspondingly the said amount of bank guarantee should be reduced. On the basis of the aforesaid contention he contends that the orders passed by this Court on 17.10.2002 read with the order dated 1.11.2002 should be modified.

3. A similar application was made by the petitioner before this Court by filing an arbitration petition No. 474 of 2003. This Court by order dated 9.12.2003 has given direction to the petitioner to move a fresh petition after producing the proof of export of all the containers or cancellation of the bonds. The learned counsel for the petitioner at that point of time had assured the Court that he will renew the bank guarantee till the eventualities are arrived at. In view of the said statement, the petitioner was allowed to withdraw the petition with liberty to file fresh petition after the contingency mentioned in the said order dated 9.12.2003 is complied with.

4. The petitioner has moved the present petition without compliance of the said contingency prescribed in the order dated 9.12.2003. It is an admitted position that all the containers are not exported nor all the bonds are cancelled. In my view, in light of the order dated 9.12.2003, it is not possible to accept the prayer of the petitioner for modification of the bank guarantee and/or reduction in the amount of bank guarantee at this stage. It is also not possible in the proceeding under section 9 of the Arbitration and Conciliation Act, 1996 to determine and/or re-work out the actual amount of the bond which is balance to be discharged

and/or the liability which may fall on the respondent with the non-compliance with the requirement of the re-export of the said containers.

5. In light of the aforesaid facts, I do not see any substance in the present petition. The petition is accordingly dismissed. However, there shall be no order as to costs.